

1861

In the United States Circuit  
Court of Appeals

FOR THE NINTH CIRCUIT

J. W. ROBINSON, as Assignee, etc.,  
*Appellant,*  
vs.  
W. F. HAYS and W. M. RUSSELL,  
*Appellees.*

RESPONDENTS' ANSWERING BRIEF

Appeal from the United States Circuit Court of the  
District of Washington, Western Division.

REYNOLDS, BALLINGER & HUTSON and  
W. F. HAYS,  
*Attorneys for Respondents.*



IN THE UNITED STATES CIRCUIT  
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| <i>Appellant,</i>                  |   |
| vs.                                |   |
| W. F. HAYS and W. M. RUSSELL,      | } |
| <i>Appellees.</i>                  |   |

RESPONDENTS' ANSWERING BRIEF.

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APPEAL FROM THE UNITED STATES CIR-  
CUIT COURT OF THE DISTRICT  
OF WASHINGTON, WESTERN  
DIVISION.

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Appellant seeks to escape the Court's order made upon his own application distributing the proceeds of a judgment for costs; appellant, at the same time, appropriating the proceeds which said order allotted to him.

1. An order entered upon the application of a party is binding upon such party, and is not appealable. (See authorities in *brief* on motion to dismiss appeal.)

2. Where a party accepts the fruits of such an order, it is thereby conclusive; therefore this appeal should be dismissed. (See authorities in *brief* on motion to dismiss.)

### *On the Merits.*

The true record facts of the case in which the judgment for the costs was entered, which in Appellant's "Statement" is *covertly* materially distorted, shows that Hays, respondent in this case, was the attorney for Marie Carrau, the respondent in that case, and in whose favor the judgment was rendered for costs, for some \$2,600. The said Marie Carrau, by her written contract, was to pay Hays one-half the recovery, *after the payment of all advanced costs*; that Hays *advanced* said costs and *duly filed his lien* therefor on said judgment as such attorney. (See Supplemental Transcript, pp. 152-191). That sometime *after* Hays had so *filed his lien* the said Marie Carrau, without notice to Hays, made an absolute assignment in writing of said judgment to Appellant Robinson. (See Assignment, pp. 4-5.)

Thereafter, while Hays was endeavoring to compel payment of said judgment, appellant petitioned the Court to cite Hays to show his *right* to said lien to said judgment. Hays thereupon showed by ample proof, satisfactory to the Court, that in addition to

his *own* cash advances so claimed by him, Respondent Russell had also advanced some \$1,600 about the year 1902, which Hays had necessarily paid out, and re-payment of which sum with interest was guaranteed by Hays to said Russell. The Court found that \$1,500, with interest, was due Russell from Hays from said fund, but required Hays to accept of said fund one-half of the sum remaining after payment to Russell of \$1,500, with interest, giving Robinson the other half so remaining, in all about \$500 each to Robinson and Hays.

Adroit attempts were made by Robinson, after he had instituted his proceeding aforesaid, to make it appear that he, Robinson, had taken such assignment as a "trustee" for *all* who had loaned money to the said Marie Carrau; but there was absolutely no proof that said assignment was made or *intended* by Marie Carrau to be made to Robinson as a "stakeholder," as he was pleased later to denominate himself. (See Transcript, pp. 4-5.)

The intention of such assignment to him was manifestly and really to *defraud* Hays out of all his personal advancements, about \$1,040, in addition to the sums so advanced by Russell. Hays should therefore have received the full sum he individually advanced for her as claimed in his written lien, in addition to the sum awarded as due to Russell, which sum Russell had long before this proceeding duly assigned to Hays as attorney in the case to obtain for him, Russell, out of said judgment. Robinson therefore by accepting and taking the money thus award-

ed him by the Court pursuant to the assignment of said judgment by the said Marie Carrau, thereby tricked and defrauded Hays out of the sum of \$496.33, which sum Robinson has received, or the most of said sum as shown by *Supplemental Transcript*, pp. 143-146.

The Court below was possessed of full power upon the application of Robinson, the assignee of the judgment, to make an order distributing the same, and when so made said order was binding upon said assignee. Furthermore, he became bound by said order when he accepted the fruits thereof.

Respectfully submitted,

REYNOLDS, BALLINGER & HUTSON  
and  
W. F. HAYS,  
*Attorneys for Respondents.*